

BEFORE THE
PUBLIC SERVICE COMMISSION of
SOUTH CAROLINA
DOCKET NO. 2006-142-C

IN RE: Petition of CharterFiberlink SC-CCO, LLC for)
 Arbitration of Certain Terms and Conditions)
 of Proposed Agreement with Piedmont Rural)
 Telephone Cooperative, Inc. Concerning)
 Interconnection Under the Communications)
 Act of 1934, as Amended by the)
 Telecommunications Act of 1996)

RETURN TO PETITION OF CHARTER FIBERLINK SC – CCO, LLC
FOR ARBITRATION WITH PIEDMONT RURAL TELEPHONE
COOPERATIVE, INC.

Piedmont Rural Telephone Cooperative, Inc. (“Piedmont”) respectfully submits this Return to the Petition for Arbitration filed by Charter FiberLink SC – CCO, LLC (“Charter”), filed on May 17, 2006. In its Petition, Charter set forth thirty-two (32) unresolved issues for arbitration. The following issues have been resolved by the Parties as of the date of filing this Petition: Issue Nos. 1, 2, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and portions of 32. Thus, of the original 32 issues, there are 14 remaining issues to be resolved (including Issue No. 32, which has been mostly resolved.)

Many of the remaining unresolved issues are related and can be grouped conceptually. Notwithstanding, the issues will be addressed in the order in which they were presented by Charter. Additionally, Piedmont does not necessarily agree with

Charter's characterization or framing of the issue in all cases, to avoid confusion and for the convenience of the Commission Piedmont will use Charter's statement of the issue but will attempt to explain the true basis for the dispute in the discussion of Piedmont's position on the issue.

In presenting the disputed language throughout this document, language proposed by Piedmont is shown in **Bold** and language proposed by Charter is shown in **Bold Underlined and Italic** print.

Piedmont is being represented in this proceeding by the McNair Law Firm and JSI (telecommunications consultants). Copies of all pleadings in this matter should be provided to the following:

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DISCUSSION OF UNRESOLVED ISSUES

A. INTERIM TRAFFIC EXCHANGE ARRANGEMENT

1. Requirement for Interim Arrangement

Issue No. 1

Issue: Pursuant to 47 C.F.R. § 51.715, must Piedmont immediately enter into an interim traffic exchange arrangement, as requested by Charter Fiberlink, and should the Commission direct Piedmont to immediately execute and implement Exhibit B without the disputed language proposed by Piedmont? (Exhibit B)

Piedmont Position: This issue has been resolved.

2. Illegal and Anticompetitive Conditions

Issue No. 2

Issue: May Piedmont condition the provision of an interim traffic transport and termination arrangement upon Charter Fiberlink's agreement not to compete in Piedmont's local service area?

Piedmont Position: This issue has been resolved.

3. Other Interim Agreement Issues

Issue No. 3

Issue: Is Charter Fiberlink required to reimburse Piedmont for transit charges paid by Piedmont for Piedmont-originated traffic delivered indirectly to Charter Fiberlink?

Piedmont Position: Piedmont believes this issue was resolved with the execution of an interim arrangement in which Charter agreed to be responsible for third party

transit charges. However, Charter has indicated this issue is not resolved.

Charter must reimburse Piedmont for third party transit charges, because Charter has agreed to do so in the interim arrangement, and the interim arrangement does not provide for true-up or retroactive application of a different arrangement.

Disputed Language: None.

Discussion:

Piedmont and Charter have resolved an interim arrangement, as referenced in Issue No. 1. Piedmont reasonably believed that all issues concerning the interim arrangement were resolved upon execution of the interim arrangement. However, Charter has indicated its intent to retain Issue No. 3, which falls under the general heading of “Interim Traffic Exchange Arrangement” and under the sub-heading “Other Interim Agreement Issues.” Charter agreed to pay transit charges in the interim, but apparently now is taking the position that its agreement to do so was subject to later “true-up” or reimbursement of those charges, despite the fact that the interim arrangement does not provide for true-up or reimbursement. Piedmont believes Charter’s position on this point is directly at odds with the interim arrangement.

In any event, even if the interim arrangement could be construed as providing for retroactive true-up once the final agreement is resolved, Charter is not entitled to reimbursement for any transit charges paid. As Piedmont explains fully in Issue Nos. 6, 7 and 8, it is not appropriate for Piedmont to be responsible for transit charges. The most stringent interconnection that can be required of Piedmont is a Point of Interconnection (“POI”) on Piedmont’s network. Each Party is responsible for the costs of the network

on its respective side of the POI. Since the BellSouth tandem is not on Piedmont's network, BellSouth's transit charges will never be the responsibility of Piedmont.

Contrary to Charter's assertions, BellSouth's transit traffic tariff is not relevant here. The Commission has recognized that BellSouth's transit tariff does not apply to companies that have an agreement with BellSouth. Execution of a transit agreement between BellSouth and Piedmont is pending as of this date, and BellSouth's transit traffic tariff does not apply to Piedmont.

Even if the Commission were to force Piedmont to pay transit charges, it is not appropriate for the payments to be retroactive. Piedmont negotiated in good faith to resolve an issue that is of Charter's own creation. Charter opened new NPA-NXX codes without following the standard, which requires Charter to take into consideration the length of time it will take to negotiate interconnection agreements with *all* applicable companies and to provision the necessary network facilities *before* establishing an NXX effective date. *See* ATIS-0300037 – Intercompany Responsibilities Within the Telecommunications Industry, Issue 3. Charter then demanded that Piedmont enter into an interim arrangement under 47 C.F.R. § 51.715. However, 47 C.F.R. § 51.715 is not even applicable to Piedmont because Piedmont is a rural telephone company. In spite of this fact, Piedmont agreed to move forward with an arrangement prior to the negotiation of a final agreement, where issues like the location of the POI could be resolved. Charter again uses 47 CFR § 51.715, which does not apply to Piedmont, to try to justify requiring reimbursement of charges that Charter agreed to pay in order to enter into an arrangement that is strictly voluntary on Piedmont's part and corrects a problem that Charter created. Piedmont should not have to pay any charges caused by Charter's improper opening of

NPA-NXX codes prior to finalizing interconnection arrangements with all the carriers within the EAS area.

In addition, Charter mischaracterizes the true-up required under 47 C.F.R. § 51.715. The interim arrangement under Section 51.715 allows reciprocal compensation¹ to be paid at an interim rate while the final rate for reciprocal compensation is negotiated or arbitrated. There is no mention of transit charges paid to third parties. The only rate that is subject to true-up under Section 51.715 is the reciprocal compensation rate paid to each other by the Parties. The *Small Entity Compliance Guide Reciprocal Compensation Arrangements between Local Exchange Carriers and Commercial Mobile Radio Service Providers*,² discusses the compensation during arbitration of a final rate that is specific to the implementation of Section 51.715, and makes it clear that the adjustment applies only to the reciprocal compensation rate. In both the interim arrangement and the agreed upon reciprocal compensation in the final agreement, the Parties have agreed to Bill and Keep reciprocal compensation. Because there will be no change in the reciprocal compensation rate from the interim arrangement to the final agreement, there is no need for a true-up. Therefore, even if Section 51.715 were to apply to Piedmont, the true-up would not apply to the transit charges paid to a third party.

Charter also argues that payment of transit charges by Charter would conflict with 47 C.F.R. § 51.703, which requires LECs to establish reciprocal compensation arrangements and provides that a LEC may not assess charges on another

¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, Report and Order, 11 FCC Rcd 15499, 16031, para. 1067 (1996) (“we find that Section 251(d)(1) gives the [FCC] authority to establish interim regulations that address the ‘just and reasonable’ rates for the ‘reciprocal compensation’ requirement of section 251(b)(5), subject to the preservation requirements of section 251(d)(3).”)

² DA 05-2002, CC Docket No. 01-92 (rel. July 14, 2005), at Section 5.

telecommunications carrier for telecommunications traffic that originates on the LEC's network. There is no conflict with Section 51.703, because that section deals with reciprocal compensation between the parties and does not deal with third party charges. Transit charges are assessed by BellSouth for the use of its network, and are not charges assessed by Piedmont for its originated traffic. Furthermore, Charter has voluntarily agreed to be responsible for BellSouth's transit charges in the interim.

For these reasons, there should be no reimbursement of transit charges paid under the interim arrangement, even if the Commission forces an indirect connection to be established in the final agreement.

B. ADOPTION OF EXISTING INTERCONNECTION AGREEMENTS

1. Requirement to File Agreements

Issue No. 4

Issue: Must Piedmont file and obtain Commission approval of its interconnection agreement with its CLEC affiliate?

Piedmont Position: Piedmont does not have, nor does it need, an interconnection agreement with its CLEC affiliate. Piedmont's CLEC affiliate shares Piedmont's switch and complies with the FCC affiliate transaction rules.

Disputed Language: Not applicable.

Discussion:

Piedmont does not have, nor does it need, an interconnection agreement with its CLEC affiliate. Piedmont's CLEC affiliate shares Piedmont's switch in an arrangement under the FCC affiliate transaction rules. Under this arrangement the CLEC pays for all

the costs incurred by the ILEC for the provision of switching. Because the ILEC and CLEC share the same switch there is not an “interconnection agreement” between the two parties. Piedmont is not required to file its affiliate transaction arrangement. See also S.C. Code Ann. § 58-9-320.

Issue No. 5

Issue: Must Piedmont make the interconnection agreement with its CLEC affiliate available for adoption pursuant to 47 U.S.C. § 252(i)?

Piedmont Position: No. See Issue No. 4.

Disputed Language: Not applicable.

C. INTERCONNECTION

Issue No. 6

Issue: Under what circumstances should indirect interconnection and direct interconnection, respectively, be required pursuant to the Agreement? (Interconnection Attachment, §§ 2, 2.1 (as referenced by Piedmont, 2.1 (including subparts), 2.2, 2.2.1, 2.2.3 (as referenced by Charter Fiberlink))

Piedmont Position: Indirect connections are allowed under the Act but are not required. Piedmont has proposed that Charter interconnect directly. Charter’s request for interconnection under Section 251(a) and (b) cannot require an interconnection that is more restrictive than interconnection under Section 251(c).

Disputed Language: 2. **Interconnection** **Physical Connection**

2.1 The Parties shall exchange Local/EAS Traffic and ISPBound Traffic **(collectively referred to from time to time hereafter as “Traffic”)** over **either Indirect or** Direct Interconnection Facilities **or a Fiber Meet Point** between their networks. The Parties agree to physically connect their respective

networks, directly or indirectly, so as to exchange such Local/EAS Traffic and ISP-Bound Traffic, with the Point of Interconnection (POI) as described below, designated at ILEC's switch (XXXXXXXX).

2.1 Indirect Interconnection

2.1.1 Either Party may deliver Local/EAS Traffic and ISP Bound Traffic indirectly to the other for termination through any carrier to which both Parties' networks are interconnected directly or indirectly. The Party originating the Local/EAS Traffic and ISP Bound Traffic shall bear all charges payable to the transiting carrier(s) for such transit services with respect to Local/EAS Traffic and ISP Bound Traffic and shall bear the cost of all facilities necessary to deliver the Traffic to the transiting carrier.

2.1.2 Unless otherwise agreed, the Parties shall exchange all Traffic indirectly through one or more transiting carriers until the total volume of Traffic being exchanged between the Parties' networks exceeds the Crossover Volume (as hereinafter defined), at which time either Party may request the establishment of Direct Interconnection. Notwithstanding the foregoing, if either Party is unable to arrange for or maintain transit service for its originated Traffic upon commercially reasonable terms before the volume of Traffic being exchanged between the Parties' networks exceeds the Crossover Volume, that Party may unilaterally at its sole expense utilize one-way trunks(s) for the delivery of its originated Traffic to the other Party. For purposes of this Agreement, Crossover Volume means a total bi- directional volume of Local/EAS Traffic exceeding [XXXXX] minutes per month for three (3) consecutive months.

2.1.3 After the Parties have established Direct Interconnection between their networks, neither Party may continue to transmit its originated Traffic indirectly except on an overflow basis.

2.1.4 Traffic exchanged by the Parties indirectly

through a transiting carrier shall be subject to the same reciprocal compensation as provided in Section 3.2. Nothing herein is intended to limit any ability of the terminating Party to obtain compensation from a transiting carrier for Traffic transmitted to the terminating Party through such transiting carrier.

2.2 Direct Interconnection

2.2.1 At such time as either Party requests Direct Interconnection as provided in Section 2.1.2, Direct Interconnection Facilities between the Parties' networks shall be established, provisioned The Direct Interconnection Facilities shall be provisioned as two-way interconnection trunks, where technically feasible. The POI is the location where one Party's operational and financial responsibility begins, and the other Party's operational and financial responsibility ends. Each Party will be financially responsible for all facilities and traffic located on its side of the POI except as otherwise stated herein. If the Parties agree to two-way trunk groups to exchange Traffic, they will mutually coordinate the provisioning and quantity of trunks. To the extent that the Parties are unable to agree upon the provisioning and quantity of two-way trunks, each Party shall use one-way trunks to deliver its originated Traffic to the other Party. The supervisory signaling specifications, and the applicable network channel interface codes for the Direct dedicated Interconnection Facilities, are the same as those used for Feature Group D Switched Access Service, as described in ILEC's applicable Switched Access Services tariff.

2.2.3 The Parties shall endeavor to establish the location of the POI by mutual agreement. Until the POI for Direct Interconnection is determined the Parties shall continue to exchange Traffic Indirectly. In selecting the POI, both Parties will act in good faith and select a point that is reasonably efficient for each Party. If the Parties are unable to agree upon the location of the POI, then the POI shall be determined pursuant to the Dispute Resolution provisions of this Agreement.

Discussion:

Piedmont generally seeks a direct interconnection with all connecting carriers and has established direct interconnection in all of its traffic exchange agreements. Direct interconnection is the only type of interconnection that Piedmont is required to enter into. Piedmont may voluntarily agree to establish indirect interconnection under 251(a) of the Act.

The composition of Section 251 of the Act is hierarchical in nature. Section 251 “create[s] a three-tiered hierarchy of escalating obligations based on the type of carrier involved.”³ Section 251(a) sets out the most general terms. These requirements apply to all telecommunications carriers. The duties are very general. Under Section 251(b) the scope narrows and becomes more restrictive. Section (b) applies only to local exchange carriers (“LECs”), including all incumbent LECs (“ILECs”), and competitive LECs (“CLECs”). Lastly, Section 251(c) has the most stringent obligations and applies only to ILECs. Based on this hierarchy, a Section 251(a) obligation for an ILEC could never be more restrictive than a 251(c) obligation.

Section 251(c) identifies the most stringent type of interconnection that is required of an ILEC. Charter requested interconnection under Section 251(a) and, therefore, Charter’s rights under Section 251(c) are not at issue in this arbitration. Under Section 251(a), Charter can request either a direct or indirect interconnection. However, Charter cannot require indirect interconnection, because that would be more restrictive than a request for direct interconnection under 251(c). Therefore, while Piedmont can

³ *Total Telecommunications Services, Inc., and Atlas Telephone Company, Inc., v. AT&T Corporation*, 16 F.C.C.R. 5726 (Mar. 13, 2001) (*Atlas II*).

voluntarily agree to an indirect connection, it is not required to do so. It is up to the carriers to determine the method of interconnection under Section 251(a).

Piedmont does not dispute the fact that indirect interconnection may be a viable method of interconnection for many carriers. Carriers that are listed in the LERG as tandem providers, such as BellSouth Telecommunications, Inc., have many carriers that connect to each other via the tandem to exchange traffic. However, such tandem providers expect to be paid for providing that function. BellSouth, for example, has included transit charges in its interconnection agreements with other carriers and has implemented a tariff to cover these charges for transit service. However, the fact that calls can be completed utilizing an indirect connection does not mean that indirect connections are required. In addition, Charter's position mischaracterizes the language in Section 2.4 of the Interconnection Attachment as indicating the Parties' agreement on indirect interconnection. Section 2.4 of the Interconnection Attachment does not indicate any such agreement, but instead only deals with a specific situation in which direct interconnection has been established, and provides that both parties will route calls over such direct interconnection except in the cases of emergency, blockage, or temporary equipment failure. Charter further argues that because there are existing common trunks between Piedmont and the BellSouth tandem that indirect connection is viable. Again, just because indirect connection may be possible does not mean it is required. In fact, the common trunks were originally established between Piedmont and BellSouth for the purpose of completing toll traffic. These trunks were not initially established for the purpose of completing local/EAS traffic. For EAS traffic, there are direct trunks between

Piedmont's end office and the other ILEC end offices. Local/EAS traffic between the Piedmont and CMRS carriers who have agreements is also exchanged over direct trunks.

Utilizing indirect trunks via the BellSouth tandem is especially inappropriate for Piedmont because its NPA-NXXs are not even homed on the BellSouth tandem. For Piedmont, routing traffic via the BellSouth tandem is not recognized as a proper routing arrangement in the Local Exchange Routing Guide ("LERG"), which is the national database for routing of calls. Such disregard for compliance with nationally recognized routing procedures should not be condoned.

For these reasons, the Commission should reject Charter's proposed language on indirect interconnection.

However, if the Commission were to mandate an indirect connection initially, the Commission should at the same time set a minute of use ("MOU") threshold for establishing a direct connection. In addition, such MOU threshold should be set at a reasonable level. Piedmont believes that a reasonable direct connection threshold would be met when the average total two-way traffic over a three (3) consecutive month period exceeds 100,000 MOU per month.

Issue No. 7

Issue:	Which party should bear the costs of transiting traffic? (Interconnection Attachment, §§ 2.1.1, 2.1.2, 3.2.3 (all sections referenced use Charter Fiberlink's numbering))
Piedmont Position:	Piedmont is only required to pay for its originated traffic to the POI between the networks of the two interconnecting carriers. The POI must be within the Piedmont's network. The only carrier that may bill or collect a transit charge is a carrier that has a tandem listed in the LERG.

Disputed Language: 2.1 Indirect Interconnection

2.1.1 Either Party may deliver Local/EAS Traffic and ISP Bound Traffic indirectly to the other for termination through any carrier to which both Parties' networks are interconnected directly or indirectly. The Party originating the Local/EAS Traffic and ISP Bound Traffic shall bear all charges payable to the transiting carrier(s) for such transit services with respect to Local/EAS Traffic and ISP Bound Traffic and shall bear the cost of all facilities necessary to deliver the Traffic to the transiting carrier.

2.1.2 Unless otherwise agreed, the Parties shall exchange all Traffic indirectly through one or more transiting carriers until the total volume of Traffic being exchanged between the Parties' networks exceeds the Crossover Volume (as hereinafter defined), at which time either Party may request the establishment of Direct Interconnection. Notwithstanding the foregoing, if either Party is unable to arrange for or maintain transit service for its originated Traffic upon commercially reasonable terms before the volume of Traffic being exchanged between the Parties' networks exceeds the Crossover Volume, that Party may unilaterally at its sole expense utilize one-way trunks(s) for the delivery of its originated Traffic to the other Party. For purposes of this Agreement, Crossover Volume means a total bidirectional volume of Local/EAS Traffic exceeding [XXXXX] minutes per month for three (3) consecutive months.

3.2.3 If either a Party provides Ttransit to the other, the Party providing the transiting switching function shall bill the originating Party for its originated Transit Traffic that is routed to the transiting provider for delivery to a third party, where the switch homing arrangement for NPA/NXX is designated as the transiting Party's tandem switch per the Local Exchange Routing Guide (LERG). The rate for Transit Traffic is listed in the Pricing Attachment of this Agreement. Each Party CLEC is responsible for negotiating any necessary

interconnection arrangements directly with the third party. **The Party providing the Transit Service** ILEC will not be responsible for any reciprocal compensation payments to **the originating Party** CLEC for Transit Traffic. Any Transit Traffic that is toll shall be governed by the **transit provider's** ILEC's access tariffs.

Discussion:

As stated in Issue 1, there is no requirement for Piedmont to connect indirectly with Charter via a third party.

As an initial matter, Charter's proposed language expands the definition of what should be considered transit traffic under this Agreement. For the purpose of this Agreement, Piedmont defines transit traffic as traffic that is routed through a tandem that is listed in the publicly available LERG and does not terminate to the tandem provider's end user customers. This definition is narrow in scope because it is used in the Agreement to define when a transit charge would be owed to one of the Parties to this Agreement. This language is in Section 3.2.3 of the Interconnection Attachment. Piedmont does not believe it is required to pay Charter a transit charge if Charter is not a publicly listed tandem provider that transits calls to a third party whose NPA-NXX is homed on its tandem. Based on this definition, only Piedmont would be entitled to charge transit charges under this Agreement. Charter currently does not have a tandem listed in the LERG. Piedmont believes this limited scope of transit traffic that is specifically addressed in the Agreement should be retained.

Charter proposes a very broad definition of Transit traffic and has coupled this definition with sweeping obligations of originating carriers to pay third parties that are not parties to this Agreement. Charter's definition includes any carrier that may touch

any portion of the call between Piedmont and Charter. Based on Charter's definition, a transit provider could provide transport or switching, would not need to be listed in any public database, and does not even have to be a telecommunications carrier. Charter further states that there may be several transit providers between Piedmont's switch and the Charter switch, and wants Piedmont to commit to pay charges to the unnamed carriers. Piedmont strongly objects to committing to make any payments to an unknown carrier that is not a party to this Agreement.

Piedmont believes the underlying driver for the broad definition of transit traffic is because Charter wants Piedmont to pay BellSouth transit charges if the Parties interconnect indirectly. As Stated in Issue 1, Piedmont is not required to connect indirectly. The maximum requirement for Piedmont is to interconnect at a Point of Interconnection ("POI") within Piedmont's network. See Section 251(c)(2)(B) of the Act. Even if an indirect connection were required, the POI location would identify where the financial responsibility of one carrier begins and the other ends. Since the POI must be on Piedmont's network, a third party tandem will never be on Piedmont's side of the POI. Piedmont's delivery of traffic to and from the POI meets their obligations under 47 CFR 51.703(b). Thus, Piedmont is not required to pay any transit charges to third parties for Local/EAS traffic, and Charter should agree to be responsible for any such transit charges assessed outside Piedmont's network.

Issue No. 8

Issue:

If the parties interconnect their networks directly, where should the POI be located? (Interconnection Attachment, §§ 2, 2.2.1, 2.2.3, 2.3, 2.3.3.1, 2.3.3.3, 2.3.3.4, 2.3.3.7 (all sections referenced using Charter Fiberlink's numbering))

Piedmont Position: The point of interconnection (“POI”) must be located within Piedmont’s network. An out-of-service POI is not required under Section 251(c)(2); therefore the less burdensome Section 251(a) could not require an out-of-service-area POI. The POI should be specifically identified in this Agreement and not be left open to a future dispute between the parties.

Disputed Language: 2. **Interconnection** Physical Connection

2.1 The Parties shall exchange Local/EAS Traffic and ISPBound Traffic (**collectively referred to from time to time hereafter as “Traffic”**) over **either Indirect or** Direct Interconnection Facilities **or a Fiber Meet Point** between their networks. The Parties agree to physically connect their respective networks, **directly or indirectly**, so as to exchange such Local/EAS Traffic and ISP-Bound Traffic, with the Point of Interconnection (POI) **as described below, designated at ILEC’s switch (XXXXXXXX).**

2.2 **2.2.1 At such time as either Party requests Direct Interconnection as provided in Section 2.12,** Direct Interconnection Facilities between the Parties’ networks shall be **established, provisioned The Direct Interconnection Facilities shall be provisioned** as two-way interconnection trunks, **where technically feasible. The POI is the location where one Party’s operational and financial responsibility begins, and the other Party’s operational and financial responsibility ends. Each Party will be financially responsible for all facilities and traffic located on its side of the POI except as otherwise stated herein. If the Parties agree to two-way trunk groups to exchange Traffic, they will mutually coordinate the provisioning and quantity of trunks. To the extent that the Parties are unable to agree upon the provisioning and quantity of two-way trunks, each Party shall use one-way trunks to deliver its originated Traffic to the other Party.** The supervisory signaling specifications, and the applicable network channel interface codes for the **Direct dedicated I**nterconnection **F**acilities, are the same as those used for Feature Group D Switched

Access Service, as described in ILEC's applicable Switched Access Services tariff.

2.2.3 The Parties shall endeavor to establish the location of the POI by mutual agreement. Until the POI for Direct Interconnection is determined the Parties shall continue to exchange Traffic Indirectly. In selecting the POI, both Parties will act in good faith and select a point that is reasonably efficient for each Party. If the Parties are unable to agree upon the location of the POI, then the POI shall be determined pursuant to the Dispute Resolution provisions of this Agreement.

2.3 Direct Interconnection

2.4.2.1 2.3.3.1 Fiber Meet Point is an interconnection arrangement whereby the Parties physically interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at **a Fiber Meet POI an interconnection point**. The location where one Party's facilities, provisioning, and maintenance responsibility begins and the other Party's responsibility ends is at the POI.

2.4.2.2 2.3.3.3 **Each Party** CLEC shall, wholly at its own expense, procure, install and maintain the agreed-upon SONET equipment **on its side of the POI in the CLEC Central Office or equipment site**.

2.4.2.3 2.3.3.4 **The Parties shall agree upon and ILEC shall designate a POI within the borders of the ILEC Exchange Area as a Fiber Meet Point, and ILEC shall make all necessary preparations to receive, and to allow and enable CLEC to deliver, fiber optic facilities into the POI with sufficient spare length to reach the fusion splice point at the Fiber Meet POI.**

2.4.2.6 2.3.3.7 Each Party will be responsible for providing its own transport facilities to the Fiber Meet **POI Point**.

Discussion:

The hierarchical nature of Section 251 of the Act as previously discussed in Issue 6 as it relates to direct and indirect interconnection also applies to the location of the POI. Section 51.305(a) of the FCC's Rules, which implements Section 251(c)(2), states, "[a]n incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network . . . (2) at any technically feasible point within the incumbent LEC's network . . ." According to the FCC's findings, Section 251(a), which applies to all telecommunications carriers, including ILECs, cannot be more burdensome than 251(c). Consequently, Section 251(a) cannot require an out-of-service-area POI, and the language in the Agreement must define the POI as located within Piedmont's network.

A different arrangement may be negotiated if both parties mutually agree. That is obviously not the case here. Even if the Parties were to mutually agree to an indirect connection, Charter seems to suggest that it is not required to specify a POI with an indirect connection. This is simply not the case. In addition to identifying the physical connection point, the POI defines where each Party's financial responsibility ends. This point must be defined in the Agreement, regardless of whether the interconnection is direct or indirect.

Lastly, based on Charter's position, it wants to defer the determination of the location of the POI. The location of the POI is a critical point of the interconnection Agreement because it defines the financial implications of this Agreement for the Parties, and the financial burdens Piedmont is undertaking by signing the Agreement. This

critical issue needs to be resolved in the interconnection agreement and not left to some future date.

Piedmont has suggested that the POI be defined at Piedmont's switch location. Charter has not proposed any alternative during negotiations. Piedmont is willing to discuss other potential POI locations as long as the location of the POI is within Piedmont's network.

Issue No. 9

Issue:	If either party is unable to arrange for or maintain transit service for the originated traffic, or if the parties are unable to agree upon the provisioning and quantity of two-way trunks, shall one-way trunks be used by a party to deliver its originated traffic to the other party? (Interconnection Attachment, §§ 2.1.2, 2.2.1 (both sections referenced use Charter Fiberlink's numbering))
Piedmont Position:	<p>As discussed in Issues 6 and 7, Piedmont does not agree that it is required to interconnect indirectly. The Parties have already agreed to pay for the facilities on each Party's side of the POI (as long as the POI is on Piedmont's network).</p> <p>Payment for the facility on either side of the POI applies in either a one-way or two-way trunking arrangement.</p>
Disputed Language:	<p><u>2.1.2 Unless otherwise agreed, the Parties shall exchange all Traffic indirectly through one or more transiting carriers until the total volume of Traffic being exchanged between the Parties' networks exceeds the Crossover Volume (as hereinafter defined), at which time either Party may request the establishment of Direct Interconnection. Notwithstanding the foregoing, if either Party is unable to arrange for or maintain transit service for its originated Traffic upon commercially reasonable terms before the volume of Traffic being exchanged</u></p>

between the Parties' networks exceeds the Crossover Volume, that Party may unilaterally at its sole expense utilize one-way trunks(s) for the delivery of its originated Traffic to the other Party. For purposes of this Agreement, Crossover Volume means a total bidirectional volume of Local/EAS Traffic exceeding [XXXXX] minutes per month for three (3) consecutive months.

2.2 2.2.1 At such time as either Party requests Direct Interconnection as provided in Section 2.1.2, Direct Interconnection Facilities between the Parties' networks shall be established, provisioned The Direct Interconnection Facilities shall be provisioned as two-way interconnection trunks, where technically feasible. The POI is the location where one Party's operational and financial responsibility begins, and the other Party's operational and financial responsibility ends. Each Party will be financially responsible for all facilities and traffic located on its side of the POI except as otherwise stated herein. If the Parties agree to two-way trunk groups to exchange Traffic, they will mutually coordinate the provisioning and quantity of trunks. To the extent that the Parties are unable to agree upon the provisioning and quantity of two-way trunks, each Party shall use one-way trunks to deliver its originated Traffic to the other Party. The supervisory signaling specifications, and the applicable network channel interface codes for the Direct dedicated Interconnection Facilities, are the same as those used for Feature Group D Switched Access Service, as described in ILEC's applicable Switched Access Services tariff.

Discussion:

Piedmont's position on the direct and indirect connection and the location of the POI has been discussed in Issues 6, 7 and 8. Piedmont is not required to indirectly connect with Charter. The most stringent requirement is for Piedmont to establish a POI within Piedmont's network. Because tandems or third party networks are not on

Piedmont's side of the POI, it is Charter's responsibility to establish terms for third party transit fees if an indirect connection were to be established.

Piedmont did not address one-way trunks in the proposed Agreement. Although one-way trunks are not as efficient as two-way trunks, Piedmont does not object to establishing one-way trunks to the POI on Piedmont's network. Charter's suggested language in Section 2.2.1 above would be modified as shown below:

Each Party will be financially responsible for all facilities and traffic located on its side of the POI ~~except as otherwise stated herein~~. If the Parties agree to two-way trunk groups to exchange Traffic, they will mutually coordinate the provisioning and quantity of trunks. To the extent that the Parties are unable to agree upon the provisioning and quantity of two-way trunks, each Party shall use one-way trunks to deliver its originated Traffic to the ~~other Party~~POI.

The Parties have agreed that each Party's financial responsibility ends at the POI. (Piedmont's agreement to this point is subject to the POI being located on Piedmont's network.) The POI that determines the financial responsibility is not conditioned on the direction of the interconnection trunks. If Charter does not like the quantity of trunks provisioned it would have the option of provisioning one-way trunks. However, the POI for these trunks would be the same regardless of whether the trunks are one-way or two-way trunks.

Piedmont wants to resolve in this interconnection Agreement any interconnection, pricing, and cost-sharing issues that are likely to arise between the Parties. Charter suggests that a POI does not have to be determined if there is an indirect connection. Piedmont disagrees. The POI is the location where one Party's financial responsibility ends and the other Party's begins. Charter presumably believes that if a POI is not specified, it will be located either at the third party tandem switch or at the Charter switch

by default. Piedmont has a right to a POI on its network and will not agree to a POI outside its network. Piedmont believes that this arbitration should resolve the issues at hand for the duration of the Agreement so there is no need for further contention in the relationship that would require protracted negotiations and possible formal dispute resolution.

Issue No. 10

- Issue:** If Charter Fiberlink elects to establish a Fiber Meet Point, should the location of the interconnection point, designated as a fiber meet POI, be determined by agreement of the parties? (Interconnection Attachment, §§ 2.3.3.1, 2.3.3.4, 2.3.3.7 (all sections referenced use Charter Fiberlink's numbering))
- Piedmont Position:** The Fiber Meet Point can be at a mutually agreeable location on Piedmont's network. The term to be used is the Fiber Meet Point, which is an industry term, and not a Fiber Meet POI.
- Disputed Language:** **2.4.2.1 2.3.3.1** Fiber Meet Point is an interconnection arrangement whereby the Parties physically interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at **a Fiber Meet POI** an interconnection point. The location where one Party's facilities, provisioning, and maintenance responsibility begins and the other Party's responsibility ends is at the POI.
- 2.4.2.3 2.3.3.4** ***The Parties shall agree upon and ILEC shall*** designate a POI **within the borders of the ILEC Exchange Area** as a Fiber Meet Point, and ***ILEC*** shall make all necessary preparations to receive, and to allow and enable CLEC to deliver, fiber optic facilities into the POI with sufficient spare length to reach the fusion splice point at the ***Fiber Meet*** POI.
- 2.4.2.6 2.3.3.7** Each Party will be responsible for providing its own transport facilities to the Fiber Meet **POI** Point.

Discussion:

The location of the Fiber Meet Point can be mutually agreed upon as long as the Fiber Meet Point is located on Piedmont's network. The location of the POI and corresponding financial responsibilities of the Parties have been discussed in Issues 6, 7, 8 and 9. The most stringent obligation that can be imposed on Piedmont is to have a POI on its network.

The proper term to be used in the agreement is "Fiber Meet Point" and not "Fiber Meet POI." It is possible to have several POIs in an interconnection arrangement. For example, a CLEC may initially use third party facilities to connect with the ILEC. As the CLEC network grows they may add a Fiber Meet Point as a second interconnection location without removing the initial POI. Therefore, the Fiber Meet Point is not the only POI, and it could be confusing to use the term "POI" to indicate the Fiber Meet Point location. Piedmont prefers to use the term "Fiber Meet Point," which is more commonly used to describe the connection. The term "Fiber Meet POI" is not the common term used in the industry and could cause confusion.

Issue No. 11**Issue:**

Should the parties bear their respective costs for interconnection on their respective sides of the POI, and if Piedmont is required or requested to build new facilities, which party should bear the costs of construction, and under what circumstances? (Interconnection Attachment, §§ 2, 2.2.1, 2.3.3.3, 2.3.3.4, 2.3.3.7, 2.6 (all of these sections referenced use Charter Fiberlink's numbering), 3.1.2, 3.1.3)

Piedmont Position:

The language in Section 2.6 (using Charter Fiberlink's numbering) and Section 3.1.3 has been resolved, and those sections have been removed from the "disputed language" below.

With respect to the remaining disputed language and the issue presented above, Piedmont is not required to build additional facilities to accommodate CLEC connections. If Charter requests additional facilities to be constructed, Charter should bear those costs.

Disputed Language: 2. **Interconnection** Physical Connection

2.1 The Parties shall exchange Local/EAS Traffic and ISP-Bound Traffic (**collectively referred to from time to time hereafter as “Traffic”**) over **either Indirect or** Direct Interconnection Facilities **or a Fiber Meet Point** between their networks. The Parties agree to physically connect their respective networks, **directly or indirectly**, so as to exchange such Local/EAS Traffic and ISP-Bound Traffic, with the Point of Interconnection (POI) **as described below, designated at ILEC’s switch (XXXXXXXXXX).**

2.2 **2.2.1 At such time as either Party requests Direct Interconnection as provided in Section 2.1.2,** Direct Interconnection Facilities between the Parties’ networks shall be **established, provisioned The Direct Interconnection Facilities shall be provisioned** as two-way interconnection trunks, **where technically feasible. The POI is the location where one Party’s operational and financial responsibility begins, and the other Party’s operational and financial responsibility ends. Each Party will be financially responsible for all facilities and traffic located on its side of the POI except as otherwise stated herein. If the Parties agree to two-way trunk groups to exchange Traffic, they will mutually coordinate the provisioning and quantity of trunks. To the extent that the Parties are unable to agree upon the provisioning and quantity of two-way trunks, each Party shall use one-way trunks to deliver its originated Traffic to the other Party.** The supervisory signaling specifications, and the applicable network channel interface codes for the **Direct dedicated I**nterconnection **F**acilities, are the same as those used for Feature Group D Switched Access Service, as described in ILEC’s applicable Switched Access Services tariff.

2.4.2.2 2.3.3.3 *Each Party* CLEC shall, wholly at its own expense, procure, install and maintain the agreed-upon SONET equipment **on its side of the POI** in the CLEC Central Office or equipment site.

2.4.2.3 2.3.3.4 *The Parties shall agree upon and* ILEC shall designate a POI **within the borders of the ILEC Exchange Area** as a Fiber Meet Point, and **ILEC** shall make all necessary preparations to receive, and to allow and enable CLEC to deliver, fiber optic facilities into the POI with sufficient spare length to reach the fusion splice point at the **Fiber Meet** POI.

2.4.2.6 2.3.3.7 Each Party will be responsible for providing its own transport facilities to the Fiber Meet **POI Point**.

3.1.2 If CLEC chooses to lease Direct Interconnection Facilities from the ILEC to reach the POI, CLEC shall compensate ILEC for such leased Direct Interconnection Facilities used for the transmission and routing of telephone exchange service and exchange access service between the Parties and to interconnect with ILEC's network at the rates contained in the Pricing Attachment, **or if not therein, at ILEC's tariffed rates.**

Discussion:

The availability of interconnection facilities is similar to Piedmont's requirement to provide tariffed elements. The services are available "where facilities exist." Piedmont is not required to incur special construction costs to accommodate Charter's interconnection.

Piedmont has agreed to bear the cost of construction of the fiber terminals and switch port terminations associated with the interconnection trunks. However, Piedmont is not required to bear the costs of special construction of fiber facilities to accommodate

interconnection with Charter. If a Fiber Meet Point is selected that requires special construction, Charter should bear the cost of that construction.

Issue No. 12

- Issue:** Is an interconnecting party using direct interconnection facilities entitled to provide its own facilities for interconnection, and, if a party chooses to lease facilities for interconnection from the other party, what should be the price of such facilities? (Interconnection Attachment, §§ 3.1.1, 3.1.2)
- Piedmont Position:** Charter can use its own facilities to interconnect with Piedmont, but the Fiber Meet Point is the only method under which Charter can provide its own facilities under the Agreement. If Charter purchases facilities from Piedmont the rates should be Piedmont's intrastate access tariff rates.
- Disputed Language:** 3.1.1 For Direct Interconnection Facilities, CLEC may (i) provide its own facilities, (ii) utilize a Fiber Meet Point, (iii) lease facilities from ILEC or (iv) lease facilities from a third party, to reach the POI.
- 3.1.2 If CLEC chooses to lease Direct Interconnection Facilities from the ILEC to reach the POI, CLEC shall compensate ILEC for such leased Direct Interconnection Facilities used for the transmission and routing of telephone exchange service and exchange access service between the Parties and to interconnect with ILEC's network at the rates contained in the Pricing Attachment, or if not therein, at ILEC's tariffed rates.

Discussion:

The ability of Charter to provision its own facilities is already accommodated in the Fiber Meet Point language in the Interconnection Attachment. This language allows Charter to directly interconnect the fiber facilities of Charter with Piedmont's fiber. Piedmont wants the Agreement to specify the type of facilities that are permitted under

this Agreement. Piedmont does not want to be forced into a facilities meet point on outdated copper facilities. Therefore, the current language proposed by Piedmont accurately reflects not only that Charter may use its own facilities; but also defines the type of facilities to be used.

If Charter does lease facilities from Piedmont, the pricing for such facilities would be listed in the Pricing Attachment to the Agreement. Piedmont initially provided a blank Pricing Attachment during negotiations and was not able to provide the actual pricing. Piedmont has been working on a Pricing Attachment for the proposed Agreement and the prices will be based on the facility charges from Piedmont's intrastate access tariff. Based on Charter's position on Issue12, it appears that Piedmont and Charter are in agreement that the pricing will either be listed in the Pricing Attachment or based on Piedmont's tariffs.

Issue No. 13

Issue:	Should the Agreement state that compensation for traffic is for the transport and termination of such traffic and that the same compensation terms apply whether the parties exchange traffic directly or indirectly, and what should be the terms of compensation? (Interconnection Attachment, §§ 2.1.4, 3.2.1, 3.2.3 (the initial referenced section uses Charter Fiberlink's numbering))
Piedmont Position:	The Parties have agreed to a bill and keep arrangement for reciprocal compensation. Piedmont does not agree to an indirect connection; however, if the POI is located on Piedmont's network as required by the Act, there would be no transiting fees on Piedmont's side of the POI.
Disputed Language:	<u>2.1.4 Traffic exchanged by the Parties indirectly through a transiting carrier shall be subject to the same reciprocal compensation as provided in</u>

Section 3.2. Nothing herein is intended to limit any ability of the terminating Party to obtain compensation from a transiting carrier for Traffic transmitted to the terminating Party through such transiting carrier.

3.2.1 This Section 3.2 is expressly limited to the transport and termination of Local/EAS Traffic and ISP-Bound Traffic originated by and terminated to End User Customers of the Parties in this Agreement. Because such traffic is believed to be in balance, both Parties agree that compensation for **the transport and termination of** Local/EAS Traffic and ISP-Bound Traffic shall be **on a Bill and Keep Basis** in the form of the mutual exchange of services provided by the other Party with no minute of use billing related to **exchange transport and termination** of such **T**traffic issued by either Party.

3.2.3 If **either** a Party provides **T**transit to the other, the Party providing the transiting switching function shall bill the originating Party for its originated Transit Traffic that is routed to the transiting provider for delivery to a third party, **where the switch homing arrangement for NPA/NXX is designated as the transiting Party's tandem switch per the Local Exchange Routing Guide (LERG)**. The rate for Transit Traffic is listed in the Pricing Attachment of this Agreement. **Each Party CLEC** is responsible for negotiating any necessary interconnection arrangements directly with the third party. **The Party providing the Transit Service ILEC** will not be responsible for any reciprocal compensation payments to **the originating Party CLEC** for Transit Traffic. Any Transit Traffic that is toll shall be governed by the **transit provider's ILEC's** access tariffs.

Discussion:

Based on the Parties' assumption that the traffic between the Parties is in balance, the Parties have agreed upon a bill and keep reciprocal compensation arrangement.

There are two situations under this Agreement where there could be a transit carrier. The first is the situation where the Parties are indirectly connected and a third party carrier seeks to collect fees from the Parties to this Agreement. The second situation is where one of the Parties to this Agreement is providing a transiting function to the other Party.

As stated in Issue 6, Piedmont is not required to indirectly connect via a third party tandem. If the Commission does not require the indirect connection, the payment of transit charges to a third party is not an issue. However, if the Commission does mandate an indirect connection, the location of the POI would determine which Party to this Agreement would be responsible for the transiting charges. As discussed in Issues 8, 9 and 10, the Act requires the POI to be located within Piedmont's network. Because the third party tandem is outside Piedmont's network, it would be on Charter's side of the POI.

Under Charter's proposed language, if Charter wants its traffic routed via a third party that is not a tandem provider, Charter can make the arrangements with that third party directly. If that is the case, the third party would not be a party to this Agreement, and there should not be obligations imposed on Piedmont with respect to such third party.

In the second situation, where one of the Parties to this Agreement has a tandem that is listed in the LERG to which other third parties are connected, the tandem provider can charge for providing a transit function. Piedmont believes the ability to charge for this transiting function should be limited to situations where the official routing of the call designates the tandem provider. Private arrangements that a party may have to provide switching functions for a third party are not part of this Agreement and should

not impose costs on a Party to this Agreement without its knowledge or consent. For example, if Charter sold switching functions to another CLEC whose NPA-NXX was listed in the LERG as located on Charter's end office switch and the Bellsouth tandem, Piedmont could not be charged a transit charge by Charter when it sends traffic on a direct trunk to Charter's end office switch. Additionally, in this situation, Piedmont does not want traffic from the third party CLEC to be routed to Piedmont on the trunk groups provisioned with Charter as part of this Agreement.

Issue No. 14

- Issue:** Should the Agreement contain a rate arbitration section? (Interconnection Attachment, § 1.3 (including subparts))
- Piedmont Position:** The rate arbitration language proposed by Piedmont is appropriate because it provides an incentive for both Parties to comply with the contract.
- Disputed Language:** **1.3 Rate Arbitration**
- 1.3.1 Rate Arbitration** Each Party agrees that it will not knowingly provision any of its services or the services of a third party in a manner that permits the circumvention of applicable switched access charges by the other Party ("Rate Arbitration") and/or the utilization of the physical connecting arrangements described in this Agreement to permit the delivery to the other Party of traffic not covered under this Agreement through the POI on local interconnection trunks. This Rate Arbitration includes, but is not limited to, third-party carriers, traffic aggregators, and resellers.
- 1.3.2** If any Rate Arbitration and/or delivery of traffic not covered under this Agreement through the local interconnection trunks is identified, the Party causing such Rate Arbitration also agrees to take all reasonable steps to terminate and/or

reroute any service that is permitting any of that Party's End User Customers or any entity to conduct Rate Arbitrage or that permits the End User Customer or any entity to utilize the POI for the delivery or receipt of such excluded traffic through the local interconnection trunks. Notwithstanding the foregoing, if any Party is found to be in violation of this Section, until such time as the Rate Arbitrage or incorrect routing of traffic is resolved, that Party shall pay applicable access charges to the other Party.

1.3.3 If either Party suspects Rate Arbitrage from the other Party, the Party suspecting arbitrage ("Initiating Party") shall have the right to audit the other Party's records to ensure that no Rate Arbitrage and/or the delivery of traffic not covered under this Agreement is taking place. Both Parties shall cooperate in providing records required to conduct such audits. Upon request by ILEC, CLEC shall be required to obtain any applicable records of any customer or other third party utilizing CLEC's interconnection with ILEC. The Initiating Party shall have the right to conduct additional audit(s) if the preceding audit disclosed such Rate Arbitrage provided, however, that neither Party shall request an audit more frequently than is commercially reasonable once per calendar year.

Discussion:

A formal agreement or contract between two parties lays out the scope of the relationship and duties of each Party to such agreement or contract. It is common practice to have language that includes incentives for the Parties to comply with all of the obligations of such agreement or contract. For example, if a company does not pay its bill on time, the billing party can charge interest on the unpaid amounts. The potential additional cost for paying a bill late provides the necessary incentive for the company to pay its bill on time. The rate arbitrage language proposed by Piedmont provides a similar

incentive. The proposed language simply states that if one carrier or carrier's customer misrepresents traffic as local traffic, then both carriers will work to immediately stop the practice and the offending carrier will pay appropriate access charges for the misrepresented traffic. This language applies equally to both Parties, and requires both Charter and Piedmont to comply with all jurisdictional rules to properly identify traffic.

Charter believes this language is not necessary because the Agreement is limited to Local/EAS traffic. The issue addressed in this section is where traffic may seem to be Local/EAS but is not. Piedmont believes there should be incentives to comply with the Agreement, and that the language should remain in the Agreement.

D. GENERAL TERMS AND CONDITIONS ("GT&C")

1. Information Service Traffic

Issue No. 15

Issue: What traffic may be exchanged, and, if so, under what circumstances? (GT&C, §§ 1.2, 1.3)

Piedmont Position: This issue has been resolved.

2. Change of Law

Issue No. 16

Issue: When should a Change of Law be deemed to occur, for purposes of the Agreement? (GT&C, §§ 1.2, 28.2)

Piedmont Position: This issue has been resolved.

3. Term of Agreement

Issue No. 17

Issue: What should be the term of the Agreement? (GT&C, §§ 2.1, 2.2 (including subparts), 3 (including subparts))

Piedmont Position: This issue has been resolved.

4. Period to Negotiate Subsequent Agreement

Issue No. 18

Issue: What is the appropriate period for the parties to negotiate a subsequent Agreement? (GT&C, § 2.1)

Piedmont Position: This issue has been resolved.

5. Assignment

Issue No. 19

Issue: What language should the Agreement contain regarding the obligation of transferees of any assignment of the Agreement to be bound by its terms? (GT&C, § 6)

Piedmont Position: This issue has been resolved.

6. Billing

Issue No. 20

Issue: What are the appropriate charges to be paid for services and facilities provided under the Agreement? (GT&C, § 9.1)

Piedmont Position: This issue has been resolved.

Issue No. 21

Issue: Should the parties be able to withhold payment of disputed amounts? (GT&C, § 9.2.1)

Piedmont Position: **This issue has been resolved.**

Issue No. 22

Issue: What is the appropriate interest rate on amounts in dispute or otherwise unpaid? (GT&C, §§ 9.2.1, 9.3.1)

Piedmont Position: **This issue has been resolved.**

Issue No. 23

Issue: What is the appropriate period following the receipt of an invoice for a party to give written notice of a dispute? (GT&C, § 9.2.1)

Piedmont Position: **This issue has been resolved.**

Issue No. 24

Issue: What is the appropriate language for the Agreement with regard to the refusal, suspension and discontinuance of service, and termination of the Agreement, if the billed party defaults on payment? (GT&C, §§ 3 (including subparts), 8, 9.2.1, 9.3.2, 9.3.3, 9.3.4, 13.3)

Piedmont Position: **This issue has been resolved.**

Issue No. 25

Issue: What language should the Agreement contain regarding the resolution of disputed paid amounts and refunds? (GT&C, §§ 9.4, 9.5)

Piedmont Position: This issue has been resolved.

Issue No. 26

Issue: Where should audits be performed? (GT&C, § 9.6)

Piedmont Position: This issue has been resolved.

7. Confidential Information

Issue No. 27

Issue: Under what circumstances may a party receiving confidential information, as defined by the Agreement, from the other party be able to provide that information to the FCC, Commission, or other governmental authority? (GT&C, §§ 11.1, 11.2)

Piedmont Position: This issue has been resolved.

Issue No. 28

Issue: Under what circumstances should documents not prepared solely for purposes of negotiation, but which are provided during the course of negotiations, be exempted from disclosure? (GT&C, § 13.1)

Piedmont Position: This issue has been resolved.

8. Indemnity

Issue No. 29

Issue: What is the appropriate language for the Agreement regarding indemnification? (GT&C, §§ 22.2 (including subparts), 22.3 (including subparts), 22.4)

Piedmont Position: This issue has been resolved.

9. Impairment of Service

Issue No. 30

Issue: What terms and conditions should apply when a party interferes with or impairs the services, facilities or equipment of the other party? (GT&C, § 27)

Piedmont Position: This issue has been resolved.

10. Definitions and Other Issues Regarding Agreement Terms

Issue No. 31

Issue: What are the appropriate definitions for use in the Agreement? (GT&C, Definitions §§ 2.14, 2.20, 2.23, 2.24, 2.27, 2.31, 2.33, 2.43, 2.45, 2.46, 2.48)

Piedmont Position: Definitions in the Glossary Sections 2.14, 2.23, 2.24, 2.27, 2.31, 2.33, 2.45 and 2.46 have been resolved. Section 2.20 is not really disputed; Piedmont's name needs to be inserted once the Agreement is completed.

Piedmont's definition of "Tandem Transit Traffic" in Section 2.43 is appropriate and should be adopted, for the reasons discussed in Issue No. 7 above.

Piedmont's definition of "Telecommunications Traffic" is consistent with FCC rules and should be adopted.

Disputed Language: 2.43 TANDEM TRANSIT TRAFFIC OR TRANSIT TRAFFIC.

Telephone Exchange Service traffic that originates on CLEC's network, and is transported through an ILEC Tandem to the Central Office of CLEC, Interexchange Carrier, Commercial Mobile Radio Service ("CMRS") carrier, or other LEC, that subtends the relevant ILEC Tandem to which CLEC delivers such traffic. Subtending Central Offices shall be determined in accordance with and as identified in the Local Exchange Routing Guide ("LERG"). Switched Access Service traffic is not Tandem Transit Traffic.

Tandem Transit Traffic or Transit Traffic means Local EAS Traffic and ISP Bound Traffic (i) that originates on one Party's network, transits through the other Party's network, and terminates to a third party Telecommunications Carrier's network, or (ii) that originates on a third party's network, transits through one Party's network and terminates to the other Party's network.

2.48 TELECOMMUNICATIONS TRAFFIC.

"Telecommunications Traffic" means Telecommunications Traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, **except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access.** *[TERM NEEDS TO BE BROADLY DEFINED HERE. WITHIN TEXT OF AGREEMENT LOCAL/EAS, ISP-BOUND, TOLL ETC. ARE SPECIFICALLY USED AS SUB-SETS OF "TELECOMMUNICATIONS TRAFFIC"]*

Discussion:

Glossary, Section 2.43 -- TANDEM TRANSIT TRAFFIC

See discussion of transit traffic in Issue No. 7 above. For the reasons discussed therein, Piedmont believes its proposed definition of Tandem Transit Traffic is appropriate for purposes of this Agreement.

Glossary, Section 2.48 -- TELECOMMUNICATIONS TRAFFIC

Piedmont has proposed the definition contained in 47 C.F.R. § 51.701(b)(1), which is the applicable definition with respect to the transport and termination of local traffic covered by this Agreement. Charter's proposal is to include traffic that is not properly considered telecommunications traffic. Piedmont's proposed definition is consistent with FCC rules and should be adopted.

Issue No. 32

Issue: Should language used in the Agreement be precise and specific, and consistent with the definitions used, so as to provide clarity and minimize disputes? (GT&C, 1st, 3rd, 4th and 5th Whereas clauses, §§ 1.2, 13, 14, 16, 26, 30, 31)

Piedmont Position: The Agreement should clearly state whether it is a traffic exchange agreement or an interconnection agreement between competing Parties. (4th "Whereas" clause)

Other sections have been resolved.

Disputed Language: WHEREAS, CLEC does not currently provide service *Telecommunications Services* in the ILEC's local service area, but the Parties exchange Telecommunications ~~T~~traffic between their networks and wish to establish an arrangement for the exchange of such traffic between their networks;

Fourth “Whereas” Clause

Charter is already providing service to five customers in Piedmont’s service area; therefore, the statement in this “Whereas” clause is not accurate. Piedmont proposes to delete this “Whereas” clause and to add to the agreement an ancillary services attachment that addresses the handling of such items as 911, directory listings, and directory publication and distribution.

Respectfully submitted,

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